

September 17, 2015

*VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED*

CSL Operating, LLC
Attn: Mahesh Naik, President/General Mgr.
Tim Mickael, CEO
529 Aldo Ave.
Santa Clara, CA 95054

CSL Operating, LLC
5845 Strassbourg Court
Reno, NV 89511

CSL Operating, LLC
c/o National Registered Agents, Inc.
818 W. 7th St.
Los Angeles, CA 90017

Re: Notice of Violation and Intent to File Suit under the Clean Water Act

Dear Mr. Naik and Mr. Mickael:

I am writing on behalf of San Francisco Baykeeper ("Baykeeper") to give notice that Baykeeper intends to file a civil action against CSL Operating, LLC ("CSL") for violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* ("Clean Water Act" or "CWA") at CSL's facility, located at 529 Aldo Avenue, Santa Clara, California (the "Facility").

Baykeeper is a non-profit public benefit corporation organized under the laws of California, with its office in Oakland, California. Baykeeper's purpose is to protect and enhance the water quality and natural resources of San Francisco Bay, its tributaries, and other waters in the Bay Area, for the benefit of its ecosystems and communities. Baykeeper has over three thousand members who use and enjoy San Francisco Bay and other waters for various recreational, educational, and spiritual purposes. Baykeeper's members' use and enjoyment of these waters are negatively affected by the pollution caused by CSL's operations.

This letter addresses CSL's unlawful discharge of pollutants from the Facility via stormwater into San Francisco Bay. Specifically, Baykeeper's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Industrial Stormwater Permit issued by the State of California (NPDES General Permit No. CAS000001 [State Water Resources Control Board] Water Quality



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Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ (“1997 Permit”) and by Order No. 2014-0057-DWQ (“2015 Permit”) (collectively, the “Industrial Stormwater Permit”).¹

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of his or her intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (“EPA”), and the State in which the violations occur. As required by section 505(b), this Notice of Violation and Intent to File Suit provides notice to CSL of the violations that have occurred and which continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, Baykeeper intends to file suit in federal court against CSL under CWA section 505(a) for the violations described more fully below.

During the 60-day notice period, Baykeeper is willing to discuss effective remedies for the violations noticed in this letter. We suggest that CSL contact us within the next twenty (20) days so that these discussions may be completed by the conclusion of the 60-day notice period. Please note that we do not intend to delay the filing of a complaint in federal court, even if discussions are continuing when the notice period ends.

I. THE LOCATION OF THE ALLEGED VIOLATIONS

A. The Facility

CSL’s Facility is located at 529 Aldo Avenue in Santa Clara, California. At the Facility, CSL conducts plating processes. Potential pollutants from the Facility include total suspended solids (“TSS”), acids, debris, solvents, and nitrates + nitrites. Stormwater from the Facility discharges, via the Santa Clara storm sewer system and/or freshwater tributaries, to San Francisco Bay.

B. The Affected Water

San Francisco Bay is a water of the United States. The CWA requires that water bodies such as San Francisco Bay meet water quality objectives that protect specific “beneficial uses.” The beneficial uses of San Francisco Bay and its tributaries include commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and non-contact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated stormwater from the Facility adversely affects the water quality of the San Francisco Bay watershed and threatens the beneficial uses and ecosystem of this watershed, which includes habitat for threatened and endangered species.

¹ On April 1, 2014, the State Water Resources Control Board adopted 2015 Permit. As of July 1, 2015, the 2015 Permit superseded the 1997 Permit except for the purpose of enforcing against violations of the 1997 Permit. 2015 Permit, Section I.A. (Finding 6).

II. THE FACILITY'S VIOLATIONS OF THE CLEAN WATER ACT

It is unlawful to discharge pollutants to waters of the United States, such as San Francisco Bay and its tributaries, without an NPDES permit or in violation of the terms and conditions of an NPDES permit. CWA § 301(a), 33 U.S.C. § 1311(a); *see also* CWA § 402(p), 33 U.S.C. § 1342(p) (requiring NPDES permit issuance for the discharge of stormwater associated with industrial activities). The Industrial Stormwater Permit authorizes certain discharges of stormwater, conditioned on compliance with its terms.

On or around June 20, 2011, CSL submitted a Notice of Intent ("NOI") to be authorized to discharge stormwater from the Facility under the 1997 Permit. On February 26, 2015, CSL submitted an NOI to be authorized to discharge stormwater from the Facility under the 2015 Permit. However, information available to Baykeeper indicates that stormwater discharges from the Facility have violated several terms of the Industrial Stormwater Permit and the CWA. Apart from discharges that comply with the Industrial Stormwater Permit, the Facility lacks NPDES permit authorization for any other discharges of pollutants into waters of the United States.

A. Discharges in Excess of BAT/BCT Levels

The Effluent Limitations of the Industrial Stormwater Permit prohibit the discharge of pollutants from the Facility in concentrations above the level commensurate with the application of best available technology economically achievable ("BAT") for toxic pollutants² and best conventional pollutant control technology ("BCT") for conventional pollutants.³ 1997 Permit, Order Part B.3.; 2015 Permit, Section X.H. EPA has published Benchmark values set at the maximum pollutant concentration present if an industrial facility is employing BAT and BCT, as listed in Attachment 1 to this letter.⁴

CSL's self-reported exceedances of Benchmark values since submitting its initial NOI on June 20, 2011, identified in Attachment 2 to this letter, indicate that CSL has failed and is failing to employ measures that constitute BAT and BCT in violation of the requirements of the Industrial Stormwater Permit. Baykeeper alleges and notifies CSL that its stormwater discharges from the Facility have consistently contained and continue to contain levels of pollutants that exceed Benchmark values for aluminum, nitrate plus nitrite (N+N), pH, zinc, and iron.

² BAT is defined at 40 C.F.R. § 442.23. Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

³ BCT is defined at 40 C.F.R. § 442.22. Conventional pollutants are listed at 40 C.F.R. § 401.16 and include BOD, TSS, oil and grease, pH, and fecal coliform.

⁴ The Benchmark values are part of EPA's Multi-Sector General Permit ("MSGP") and can be found at: <http://water.epa.gov/polwaste/npdes/stormwater/EPA-Multi-Sector-General-Permit-MSGP.cfm>. The most recent sector-specific Benchmarks are available at: http://water.epa.gov/polwaste/npdes/stormwater/upload/msgp2015_part8.pdf ("2015 MSGP"). SIC Code 3471 is covered under Sector AA in the 2015 MSGP.

CSL's ongoing discharges of stormwater containing levels of pollutants above EPA Benchmark values and BAT- and BCT-based levels of control also demonstrate that CSL has not developed and implemented sufficient Best Management Practices ("BMPs") at the Facility. Proper BMPs could include, but are not limited to, moving certain pollution-generating activities under cover or indoors, capturing and effectively filtering or otherwise treating all stormwater prior to discharge, frequent sweeping to reduce the build-up of pollutants on-site, installing filters in downspouts and storm drains, and other similar measures.

CSL's failure to develop and/or implement adequate pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial Stormwater Permit each and every day CSL discharges stormwater without meeting BAT/BCT. Baykeeper alleges that CSL has discharged stormwater containing excessive levels of pollutants from the Facility to San Francisco Bay during at least every significant local rain event over 0.1 inches since June 20, 2011. Attachment 3 compiles all dates since June 20, 2011 when a significant rain event occurred. CSL is subject to civil penalties for each violation of the Industrial Stormwater Permit and the CWA since it filed its initial NOI on June 20, 2011.

B. Discharges Impairing Receiving Waters

The Industrial Stormwater Permit's Discharge Prohibitions disallow stormwater discharges that cause or threaten to cause pollution, contamination, or nuisance. *See* 1997 Permit, Order Part A.2.; 2015 Permit, Sections III.C., VI.C. The Industrial Stormwater Permit also prohibits stormwater discharges to surface or groundwater that adversely impact human health or the environment. 1997 Permit, Order Part C.1.; 2015 Permit, Section VI.B. Receiving Water Limitations of the Industrial Stormwater Permit prohibit stormwater discharges that cause or contribute to an exceedance of applicable Water Quality Standards ("WQS"). 1997 Permit, Order Part C.2.; 2015 Permit, Section VI.A. Applicable WQS are set forth in the California Toxics Rule ("CTR")⁵ and Chapter 3 of the San Francisco Bay Basin (Region 2) Water Quality Control Plan ("Basin Plan").⁶ *See* Attachment 1. Exceedances of WQS are violations of the Industrial Stormwater Permit, the CTR, and the Basin Plan.

The Basin Plan establishes WQS for San Francisco Bay and its tributaries, including but not limited to the following:

- Waters shall not contain substances in concentrations that result in the deposition of material that cause nuisance or adversely affect beneficial uses.

⁵ The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31,682 (May 18, 2000).

⁶ The Basin Plan is published by the San Francisco Bay Regional Water Quality Control Board at: http://www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml#2004basinplan.

- Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
- Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases from normal background light penetration or turbidity relatable to waste discharge shall not be greater than 10 percent in areas where natural turbidity is greater than 50 NTU.
- All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms.
- Surface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use. The Basin Plan, Table 3-3, identifies specific marine water quality objectives for toxic pollutants.⁷

Baykeeper alleges that CSL's stormwater discharges have caused or contributed to exceedances of the Receiving Water Limitations in the Industrial Stormwater Permit and the WQS set forth in the Basin Plan and CTR. These allegations are based on CSL's self-reported data submitted to the San Francisco Bay Regional Water Quality Control Board. The sampling results indicate that CSL's discharges are causing or threatening to cause pollution, contamination, and/or nuisance; adversely impact human health or the environment; and violate applicable WQS. For example, CSL's sampling results indicate exceedances of numeric WQS for pH and zinc. *See Attachment 2.*

Baykeeper alleges that each day that CSL has discharged stormwater from the Facility, CSL's stormwater has contained levels of pollutants that exceeded one or more of the Receiving Water Limitations and/or applicable WQS in San Francisco Bay. Baykeeper alleges that CSL has discharged stormwater exceeding Receiving Water Limitations and/or WQS from the Facility to San Francisco Bay during at least every significant local rain event over 0.1 inches since June 20, 2011. *See Attachment 3.* Each discharge from the Facility that violates a Receiving Water Limitation or has caused or contributed, or causes or contributes, to an exceedance of an applicable WQS constitutes a separate violation of the Industrial Stormwater Permit and the CWA. CSL is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA since June 20, 2011.

⁷ Basin Plan, Table 3-3 is available at:
http://www.waterboards.ca.gov/rwqcb2/water_issues/programs/planningtmdls/basinplan/web/tab/tab_3-03.pdf.

C. Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan

The Industrial Stormwater Permit requires dischargers to develop and implement an adequate Storm Water Pollution Prevention Plan ("SWPPP"). 1997 Permit, Section A.1.a. and Order Part E.2.; 2015 Permit, Sections I.I. (Finding 54), X.B. The Industrial Stormwater Permit also requires dischargers to make all necessary revisions to existing SWPPPs promptly. 1997 Permit, Order Part E.2.; 2015 Permit, Section X.B.

The SWPPP must include, among other requirements, the following: a site map, a list of significant materials handled and stored at the site, a description and assessment of all potential pollutant sources, a description of the BMPs that will reduce or prevent pollutants in stormwater discharges, and specifications of BMPs designed to reduce pollutant discharge to BAT and BCT levels. 1997 Permit, Sections A.1.-A.10.; 2015 Permit, Section X. Moreover, the Industrial Stormwater Permit requires dischargers to evaluate and revise SWPPPs to ensure they meet these minimum requirements, in particular that the necessary BMPs are in place and being implemented. *See* 1997 Permit, Section A.9. (requiring a comprehensive site compliance evaluation completed each reporting year, and revisions to the SWPPP implemented within 90 days after the evaluation); 2015 Permit, Section X.D.2.a. (obligating the discharger to "ensure its SWPPP is developed, implemented and revised as necessary to be consistent with any applicable municipal, state, and federal requirements that pertain to the requirements in [the 2015 Permit].").

Based on information available to Baykeeper, CSL has failed to prepare and/or implement an adequate SWPPP and/or to revise the SWPPP to satisfy each of the requirements of the Industrial Stormwater Permit. For example, CSL's past or current SWPPP has not/does not include and/or CSL has not implemented adequate BMPs designed to reduce pollutant levels in discharges to BAT and BCT levels in accordance with the Industrial Stormwater Permit, as evidenced by the data in Attachment 2.

Moreover, CSL's latest SWPPP, revised in July 2015 ("CSL SWPPP"), does not meet the requirements of the 2015 Permit. The CSL SWPPP describes "minimum BMPs," including Good Housekeeping, Preventative Maintenance, Spill Response, Materials Handling and Waste Storage, Erosion Control, Employee Training, and Recording Keeping and Reporting. CSL SWPPP, pp. 5.2-5.8. The Good Housekeeping BMPs are described in the most general terms, without describing how the BMPs will be implemented, the locations where the BMPs shall be implemented, and the procedures for implementing the BMPs, as required by the 2015 Permit. *See* 2015 Permit, Section X.H.1., note 12 (requiring "Dischargers to select, design, install and implement" BMPs that meet the minimum Good Housekeeping BMPs described) and Section X.H.4. (requiring that the SWPPP specifically describe the procedure for each BMP).

Accordingly, CSL has violated the CWA each and every day that it has failed to develop and/or implement an adequate SWPPP meeting all of the requirements of the Industrial Stormwater Permit, and CSL will continue to be in violation every day until it

develops and implements an adequate SWPPP. CSL is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA occurring since it filed its initial NOI on June 20, 2011.

D. Unpermitted Discharges

Section 301(a) of the CWA prohibits the discharge of any pollutant into waters of the United States unless the discharge is authorized by a NPDES permit issued pursuant to section 402 of the CWA. *See* 33 U.S.C. §§ 1311(a), 1342. CSL sought coverage for the Facility under the Industrial Stormwater Permit, which states that any discharge from an industrial facility not in compliance with the Industrial Stormwater Permit “must be either eliminated or permitted by a separate NPDES permit.” 1997 Permit, Order Part A.1.; 2015 Permit, Sections I.A. (Finding 8) and I.C. (Finding 28). Because CSL has not obtained coverage under a separate NPDES permit and has failed to eliminate discharges not permitted by the Industrial Stormwater Permit, each and every discharge from the Facility described herein not in compliance with the Industrial Stormwater Permit has constituted and will continue to constitute a discharge without CWA permit coverage in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

IV. PERSON RESPONSIBLE FOR THE VIOLATIONS.

CSL Operating, LLC is the person responsible for the violations at the Facility described above.

V. NAME AND ADDRESS OF NOTICING PARTY

San Francisco Baykeeper
1736 Franklin Street, Suite 800
Oakland, CA 94612
(510) 735-9700

VI. COUNSEL

Baykeeper is represented by the following counsel in this matter, to whom all communications should be directed:

Erica A. Maharg, Staff Attorney
George Torgun, Managing Attorney
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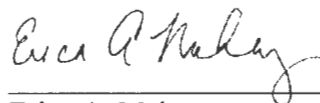
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VII. REMEDIES.

Baykeeper intends, at the close of the 60-day notice period or thereafter, to file a citizen suit under CWA section 505(a) against CSL for the above-referenced violations. Baykeeper will seek declaratory and injunctive relief to prevent further CWA violations pursuant to CWA sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. In addition, Baykeeper will seek civil penalties pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4, against CSL in this action. The CWA imposes civil penalty liability of up to \$37,500 per day per violation for violations occurring after January 12, 2009. 33 U.S.C. § 1319(d); 40 C.F.R. § 19.4. Baykeeper will seek to recover attorneys' fees, experts' fees, and costs in accordance with CWA section 505(d), 33 U.S.C. § 1365(d).

As noted above, Baykeeper is willing to meet with you during the 60-day notice period to discuss effective remedies for the violations noted in this letter. Please contact me or George Torgun to initiate these discussions.

Sincerely,



Erica A. Maharg
Staff Attorney
San Francisco Baykeeper

Cc:

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
Mail Code: 1101A
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Jared Blumenfeld, Regional Administrator
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San Francisco Bay Region
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Thomas Howard, Executive Director
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1001 I Street
Sacramento, CA 95814

Attachment 1: EPA Benchmarks and Water Quality Standards for Discharges to Freshwater

A. EPA Benchmarks, 2000 and 2015 Multi-Sector General Permit (“MSGP”)

Parameter	Units	Benchmark value	Source
pH	SU	6.0 – 9.0	2000 MSGP
Total Suspended Solids	mg/L	100	2000 MSGP
Chemical Oxygen Demand	mg/L	120	2000 MSGP
Oil and Grease	mg/L	15	2000 MSGP
Aluminum Total	mg/L	0.75	2015 MSGP
Iron Total	mg/L	1.0	2015 MSGP
Zinc Total	mg/L	0.13	2015 MSGP*
Nitrate plus Nitrite Nitrogen	mg/L	0.16	2015 MSGP

* Assuming a water hardness range of 100-125 mg/L

B. Water Quality Standards (Basin Plan, Tables 3-3, 3-3A)

Parameter	Units	WQS value	Source
pH	SU	6.5 – 8.5	Basin Plan
Zinc	mg/L	0.12	Basin Plan

Attachment 2: Table of Exceedances for CSL Operating, LLC

Table containing each stormwater sampling result which exceeds EPA Benchmarks and/or causes or contributes to an exceedance of Basin Plan Water Quality Standards. The EPA Benchmarks and Basin Plan Water Quality Standards are listed in Attachment 1. All stormwater samples were reported by the Facility during the past five (5) years.

Rpt Period	Sample Date	Parameter	Result	Unit
2011-2012	12/15/2011	Al	1.9	mg/L
2011-2012	2/13/2012	Al	1.16	mg/L
2012-2013	11/21/2012	Al	1.34	mg/L
2013-2014	11/20/2013	Al	3.33	mg/L
2013-2014	2/6/2014	Al	1.14	mg/L
2014-2015	2/6/2015	Al	1.48	mg/L
2014-2015	2/6/2015	Fe	6.14	mg/L
2011-2012	12/15/2011	N+N	14.1	mg/L
2011-2012	2/13/2012	N+N	5.8	mg/L
2012-2013	11/21/2012	N+N	5.1	mg/L
2012-2013	12/26/2012	N+N	2.8	mg/L
2013-2014	11/20/2013	N+N	18.6	mg/L
2013-2014	2/6/2014	N+N	10.6	mg/L
2014-2015	12/2/2014	N+N	2.3	mg/L
2014-2015	2/6/2015	N+N	12	mg/L
2013-2014	11/20/2013	pH	5.18	SU
2013-2014	2/6/2014	pH	5.19	SU
2011-2012	12/15/2011	Zn	2.58	mg/L
2011-2012	2/13/2012	Zn	1.42	mg/L
2012-2013	11/21/2012	Zn	1.11	mg/L
2012-2013	12/26/2012	Zn	0.657	mg/L
2013-2014	11/20/2013	Zn	2.86	mg/L
2013-2014	2/6/2014	Zn	1.41	mg/L
2014-2015	12/2/2014	Zn	0.596	mg/L
2014-2015	2/6/2015	Zn	2.73	mg/L

June 20, 2011 to September 17, 2015

Days with precipitation one-tenth of an inch or greater, as reported by NOAA's National Climatic Data Center; San Jose, CA station, GHCND:USW00023293, when a stormwater discharge from the Facility is likely to have occurred. <http://www.ncdc.noaa.gov/cdo-web/search>

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